

ECS File: JPA-89-11
Project No.: M-703-3(5)
TRACS NO.: 7033 MA SCT SS136 01C
Project: Shea Boulevard
Section: Scottsdale Rd. - Pima Rd.

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF SCOTTSDALE

THIS AGREEMENT is entered into March 23, 1989, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the State) and the CITY OF SCOTTSDALE, acting by and through its CITY COUNCIL (Local Agency).

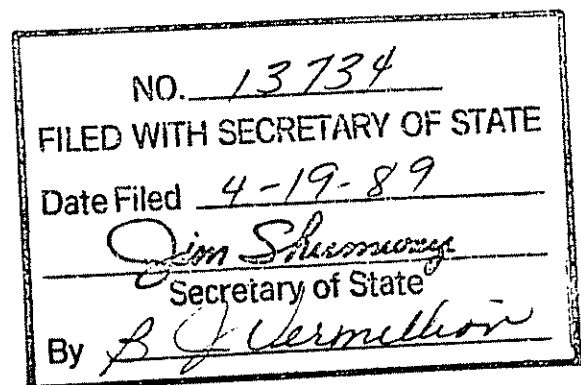
I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. Local Agency is empowered by Arizona Revised Statutes Section 48-572, and provisions in the City Charter Art. 1, Sec. 3-1 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of Local Agency.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. Such project within the boundary of Local Agency has been selected by Local Agency; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.



5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of Local Agency by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. Local Agency, in order to obtain federal funds for the construction of the project, is willing to provide the State with Local Agency funds to match federal funds in the ratio required or as finally fixed and determined by FHWA.

7. The work embraced in this agreement and the estimated cost are as follows: ROADWAY WIDENING, CURB, GUTTER, AND SIDEWALK

| | | |
|--------------------------------|---|-----------------|
| Estimated Cost | | \$1,337,673.00 |
| Federal Funds @ 92.48 % | | \$1,237,080.00 |
| City of Scottsdale Funds | = | \$ 127,346.000* |
| Non Federal-aid Funds | + | \$ 50,000.00 |
| TOTAL City of Scottsdale Funds | = | \$ 177,346.00 |

* This includes a 2% surcharge on the total cost as per Chief Deputy State Engineer memo of February 2, 1982.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the Local Agency, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available.

c. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of Local Agency's deposit unless and until so authorized in writing by the Local Agency.

2. Prior to the solicitation of bids, the Local Agency shall deposit funds with the State in the amount determined by the State to be necessary to match federal funds in the ratio required.

Upon completion of the construction contract, the State shall return to the Local Agency any part of the funds deposited by Local Agency remaining after Local Agency's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The Local Agency shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The Local Agency shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The Local Agency shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Local Agency shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Local Agency.

6. Upon completion of construction, the Local Agency shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

7. The Local Agency shall mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

8. By such regulation as it may by ordinance provide, the Local Agency shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. Local Agency assumes full responsibility for the design, plans and specifications, the engineering in connection therewith, and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of Local Agency and that Local Agency hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, Local Agency, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the work covered by this agreement is to be borne by FHWA and Local Agency, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, Local Agency agrees to furnish and provide State with Local Agency funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled by the Governor in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

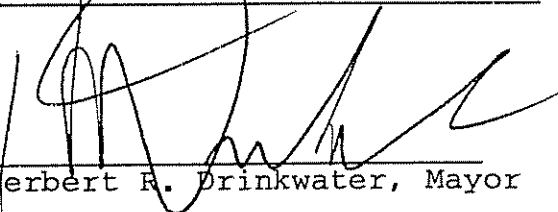
Arizona Department of Transportation
Engineering Consultant Services
205 South 17 Avenue, Room 118E
Phoenix, AZ 85007

City of Scottsdale
Al Dreska, Project Management Administrator
3939 Civic Center Plaza
Scottsdale, Arizona 85251

9. Attached hereto and incorporated herein by reference is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF SCOTTSDALE

By 
Herbert R. Drinkwater, Mayor


STATE OF ARIZONA
Department of Transportation

By 
THOMAS A. BRYANT, II
State Engineer

ATTEST: Mark G. Mazzie
City Clerk

BY: 
Deputy City Clerk

REVIEWED

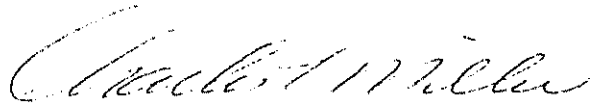

Thomas J. Wilson
City Attorney

0562(3)

R E S O L U T I O N

Be it resolved on this, the 25th day of January, 25, 1989, that I, CHARLES L. MILLER, as Director, Arizona Department of Transportation, have determined that pursuant to A. R. S. 28-108, it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through its Highways Division, enter into an Intergovernmental Agreement with the City of Scottsdale for Project No. M-703-3(5), TRACS NO. 7033 MA SCT SS136 01C, Shea Blvd., Scottsdale Rd. - Pima Rd.

Work entails the widening of Shea Blvd., including the installation of curb, gutter, and sidewalk.



CHARLES L. MILLER, Director
Arizona Department of Transportation

RESOLUTION NO. 3129

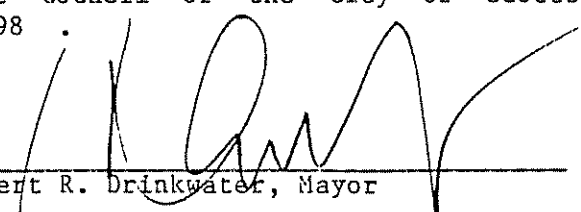
A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE
MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO
ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE
STATE OF ARIZONA, ACTING BY AND THROUGH ITS DEPARTMENT
OF TRANSPORTATION

WHEREAS, the City of Scottsdale is desirous of entering into an
Intergovernmental Agreement with the State of Arizona for the purpose of
completing the widening of Shea Boulevard between Scottsdale Road and Pima
Road

WHEREAS, the City of Scottsdale is authorized pursuant to
Arizona Revised Statutes and City Charter to enter into Intergovernmental
Agreements and to provide funds for Capital Improvement Projects

NOW THEREFORE BE IT RESOLVED by the Council of the City of
Scottsdale, Arizona that the Mayor is authorized to execute the attached
Agreement on behalf of the City of Scottsdale, and Alvis T. Dreska, Project
Management Administrator, is the City's authorized administrator of this
Agreement.

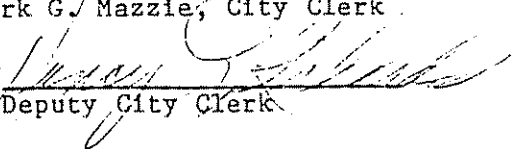
PASSED AND ADOPTED by the Council of the City of Scottsdale
this th day of , 198 .



Herbert R. Drinkwater, Mayor

ATTEST:

Mark G. Mazzie, City Clerk

By 
Deputy City Clerk

REVIEWED:



Thomas J. Wilson
City Attorney



Office of the
CITY ATTORNEY
(602) 994-2405

April 10, 1989

Mr. Ronald D. Midkiff
Arizona Department of Transportation
Local Government Services
206 South Seventeenth Avenue, 216E
Phoenix, Arizona 85007

RE: Project No. M-703-3(5)
7033 MA SCT SS136 01C
Shea Blvd.
Scottsdale Rd. - Pima Rd.

Dear Mr. Midkiff:

I am an Assistant City Attorney with the City of Scottsdale, and I have reviewed the proposed intergovernmental agreement between the City of Scottsdale and the State of Arizona regarding the above numbered and titled project. The City of Scottsdale has the authority to enter into this agreement pursuant to Arizona Revised Statute Sec. 48-572 and provisions of the Scottsdale City Charter, Article I, Section 3-1. A review of the agreement also shows it to be in proper form.

Very truly yours,

Joseph L. Olcavage
Assistant City Attorney

JLO:sc

SCOTTSDALE CITY COUNCIL

MINUTES

Tuesday, March 7, 1989

CALL TO ORDER

A regular meeting of the Scottsdale City Council was called to order by Mayor Herbert Drinkwater at 6:00 p.m., Tuesday, March 7, 1989, in the Kiva, City Hall.

ROLL CALL

Present: Mayor Herbert Drinkwater
Councilmen Bill Soderquist,
Ross Dean, Myron Deibel,
Bill Walton and Susan Bitter
Smith

Also Present: City Manager Jorge Carrasco
City Attorney Tom Wilson
City Clerk Mark Mazzie

Absent: Councilman Sam Campana

SALUTE TO THE FLAG

Mayor Drinkwater asked Shawn Warner, a Life Scout from the Los Arcos Methodist Church, to lead the Council and the audience in reciting the Pledge of Allegiance to the Flag.

PRESENTATIONS

Bob Hahn from the Papago Lions Club presented to the Mayor a plaque and a Kachina as a sign of appreciation to the City of Scottsdale for their help in the Scottsdale Kachina 10K.

PRESENTATION OF PLAQUE

Mayor Drinkwater presented to Mike Darrow a plaque for his citizen involvement on the Airport Advisory Commission from December 1982 to January 1989.

Mike Darrow thanked the Council. He discussed how the airport has changed over the years. He feels that the future will bring problems if the City does not continue to be responsive to the needs of the airport and the surrounding businesses and residential areas. He suggested that the Council ensure the growth around the

airport is compatible with the airport.

APPROVAL OF THE MINUTES

MOTION: Mayor Drinkwater asked if there were any additions or corrections to the Minutes of the special meeting held on February 13, 1989, and the regular meeting of February 21, 1989. Councilman Dean moved to approve the Minutes as submitted. The motion was seconded by Vice-Mayor Soderquist, and carried unanimously 6-0.

CONTINUANCES

2. 49-Z-88 -- rezone from C-2 (Central Business District) to D/OR-2 with PBD Overlay (Downtown Office-Residential) with Type 2 Standards in a Planned Block Development) with modified development standards -- southwest corner of 70th Street and 1st Avenue. TO BE CONTINUED TO APRIL 4, 1989.
3. 53-Z-88 -- rezone from I-G (Garden Industrial) to I-1 (Industrial Park) Conditional -- southeast corner of 82nd Street and Evans Road. TO BE CONTINUED TO MARCH 21, 1989.
4. 70-Z-88 -- rezone from R1-43 (Single-Family Residential) to R1-10 PRD (Single-Family Residential in a Planned Residential District) and R1-18 PRD (Single-Family Residential in a Planned Residential District) -- north side of Pinnacle Peak Road between Miller and Shaffer Roads. TO BE CONTINUED TO MARCH 21, 1989.
5. 75-Z-89 -- rezone from I-1 (Industrial Park) to C-4 (C) (General Commercial Conditional) -- southwest corner of 74th Street and Butherus Drive. TO BE CONTINUED TO MARCH 21, 1989.
6. 3-Z-89 -- rezone from C-3 (Highway Commercial) to Downtown Office/Retail (Type 2) with a Planned Block Development Overlay -- southwest corner of Camelback and Scottsdale Roads. TO BE CONTINUED TO MARCH 21, 1989.
7. 45-UP-88 -- revision and expansion of an existing use permit for a cemetery -- 9300 East Shea Boulevard. TO BE CONTINUED TO MARCH 21, 1989.
8. 1-GP-89 -- amend the Scottsdale General Plan in the Black Mountain Study Area -- bounded by Scottsdale Road on the east, Jomax Road on the south, 56th Street on the west and Carefree Highway on the north. TO BE CONTINUED TO MARCH 21, 1989.
9. Class B Bingo License -- Past Exhalted Rulers Association of the Benevolent and Protective Order of the Elks Lodge No. 2148. This continuance will allow time for the Police Department and Project Coordination to conclude their investigation.

SCOTTSDALE CITY COUNCIL

MINUTES

Tuesday, February 21, 1989

CALL TO ORDER

A regular meeting of the Scottsdale City Council was called to order by Mayor Herbert Drinkwater at 5:00 o'clock p.m., Tuesday, February 21, 1989, in the Kiva, City Hall.

ROLL CALL

Present: Mayor Herbert Drinkwater,
Councilmen Sam Campana, Ross Dean,
Myron Deibel, Bill Soderquist,
Bill Walton, and Susan Bitter Smith.

Also Present: City Manager Jorge Carrasco,
City Attorney Tom Wilson, and
City Clerk Mark Mazzie.

SALUTE TO THE FLAG

Mayor Drinkwater invited Josh Older, Boy Scout Troop 347, to lead Council and the audience in reciting the Pledge of Allegiance to the Flag.

BOARDS AND COMMISSIONS

MOTION: Councilman Soderquist moved that Ed Phillips be put on the Airport Advisory Commission from February 21st, 1989, to March 1st, 1992. The motion was seconded by Councilman Walton, and passed unanimously, 7-0.

Mayor Drinkwater then swore in Mr. Phillips.

APPROVAL OF THE MINUTES

MOTION: Mayor Drinkwater asked if there were any additions or corrections to the Minutes of the work study sessions held on January 23 and 30, 1989, and of the Regular Council Meetings held on February 6 and 7, 1989. When there was no response, Councilman Dean moved that they be approved. The motion was seconded by Councilman Walton, and passed unanimously, 7-0.

CONSENT AGENDA

Mayor Drinkwater advised that Items 2 through 16 would be approved with one motion unless any member of Council or the audience asked for additional information on any item. Councilman Smith asked that Items 2 and 8 be removed. Councilman Dean requested that Item 11 be removed.

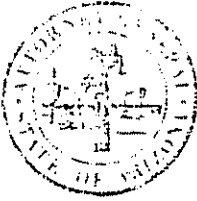
REGULAR AGENDA -- Item 17TRANSPORTATION AND OPERATIONS

17. Adopt Resolution No. 3129 authorizing the City enter into Intergovernmental No. 880066 with the State of Arizona through the Department of Transportation for the widening of Shea Boulevard from Scottsdale Road to Pima Road; Authorize Intergovernmental Agreement No. 880066 with the State of Arizona, Department of Transportation; Adopt Resolution No. 3131 authorizing acquisition of minor additional right-of-way parcels and revisions to previously authorized acquisitions; Authorize payment of the City's estimated share of the project cost to the Arizona Department of Transportation in the amount of \$177,346; Authorize payment to Arizona Public Service Company for underground conversion and new streetlighting costs in the approximate amount of \$135,000; Authorize payment to U.S. West Communications for utility relocations in the approximate amount of \$15,000; AND Authorize funds transfers totaling \$150,000 to the Shea Boulevard: Scottsdale to Pima, Phase II project from available project savings in the Stagecoach Pass (\$60,000) and Hayden Road: McKellips to Indian School (\$90,000) project accounts.

MOTION: Councilman Smith moved to adopt Resolution No. 3129 authorizing the City to enter into Intergovernmental No. 880066, and also moved to adopt Resolution No. 3131. The motion was seconded by Councilman Soderquist, and passed unanimously, 7-0.

CONTINUANCES

18. 45-UP-88 -- revision and expansion of an existing use permit for a cemetery at 9300 East Shea Boulevard. TO BE CONTINUED TO MARCH 7, 1989.
19. 24-Z-88 -- rezone from I-1 (Industrial Park) to C-3 (Highway Commercial) -- northwest corner of 83rd Place and Hayden Road. TO BE CONTINUED TO MARCH 21, 1989.
20. 53-Z-88 -- rezone from I-G (Garden Industrial) to I-1 (Industrial Park) Conditional -- southeast corner of 82nd Street and Evans Road. TO BE CONTINUED TO MARCH 7, 1989.
21. 70-Z-88 -- rezone from R1-43 (Single-Family Residential) to R1-10 PRD (Single-Family Residential in a Planned Residential District) and R1-18 PRD (Single-Family Residential in a Planned Residential District) -- north side of Pinnacle Peak Road between Miller and Shaffer Roads. TO BE CONTINUED TO MARCH 7, 1989.
22. 75-Z-88 -- rezone from I-1 (Industrial Park) to C-4 (C) (General Commercial Conditional) -- southwest corner of 74th Street and Butherus Drive. TO BE CONTINUED TO MARCH 7, 1989.



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

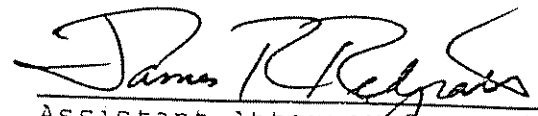
DETERMINATION

A. G. Contract No. 4289-0537, is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 3rd day of April, 1989.

ROBERT K. CORBIN
Attorney General


Assistant Attorney General
Transportation Division